S.B. CIVIL WRIT PETITION NO.1318/2004

Rajesh Singhvi vs. State of Rajasthan and another.

Date : 7.2.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. M.R. Singhvi, for the petitioner.

Mr. L.R. Upadhyay, Dy.GA, for the respondents.

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Heard learned counsel for the parties.

The facts of the case are that the property in dispute is situated in Jodhpur at Plot No.A 60, Shastri Nagar and it was liable for tax under the Rajasthan Land and Building Tax Act, 1964. The owner of the property, at the relevant time, took the benefit of one time payment of tax by depositing the tax for which a certificate (Annex.1) was issued by the Assistant Director, Land & Building Tax on 8.10.1992. This property was purchased by the petitioner vide registered sale deed dated 5.9.1992. The respondent assessing authority issued notice to the petitioner for assessment of tax only on the ground that the petitioner, who is purchaser of the property in dispute from the original owner Smt. Utsav Kumar Bhandari, is liable for fresh tax assessment as the benefit which the vendor of the property in dispute availed, is not available to the petitioner. It will be relevant to mention here that in the assessment order dated 30.12.1997, the petitioner's

plot number is given as A 184, Shastri Nagar, Jodhpur but the appellate authority held that it was only a mistake in writing plot number and in fact, assessment was made for plot no.A 60.

According to learned counsel for the petitioner, identical issue was subject matter in Writ Petition No.55/1998 (East India Hotels Ltd. & Anr. vs. State of Raj. & Ors. Reported in A.I.R. 2001 (Raj.) 286) was decided by the Division Bench of this Court. The Division Bench held that the land already assessed under the scheme of one time tax payment and exemption certificate is issued for the property from future tax liability, then on transfer of land, initiation of fresh assessment proceedings against such land for assessing the tax again is impermissible. The Division Bench held that the tax and exemption is on property and not upon the person.

Learned counsel for the petitioner further submitted that the State Government, against the aforesaid decision of the division bench, filed S.L.P. Which was dismissed. He further stated that other similar S.L.Ps. Were withdrawn by the State Government.

According to learned counsel for petitioner, in view of the above, no amount can be demanded from the petitioner in view of the fact that the property has already been exempted from payment of tax by the respondents themselves.

Learned Dy. Govt. Advocate appearing for respondents submitted that the assessing authority rightly held that the decision of this Court delivered in the case of East India Hotels (supra) can be given effect to prospectively and, therefore, the said decision cannot be applied to the case of the petitioner.

I have considered the rival submissions and have perused the documents on the record.

There is no dispute that the property in question has already been exempted from tax liability as the predecessor of the petitioner paid the entire tax amount for which a certificate has already been issued by the assessing authority on 8.10.1992. Hence, in view of the reasons given in the case of East India Hotels (supra), this writ petition deserves to be allowed as the assessing authority committed serious error of law in holding that the judgment could be given effect to only prospectively whereas in fact that is a declaration of law about legal position and it is effective from the time when the said provision of law was inserted.

Accordingly, this writ petition is allowed, the impugned orders dated 30.12.1997 (Annex.3), 11.11.1998 (Annex.5) and order dated 29.1.2003 (Annex.8) are set aside.

(PRAKASH TATIA), J.

S.Phophaliya